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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 10 अगस्त, 2020

आ. अ. 20(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (क) के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा, वर्ष 2019 की निर्वाचन याचिका संख्या 3 और 4 में केरल उच्च न्यायालय के दिनांक 31 अक्टूबर, 2019 के आदेश को प्रकाशित करता है।

(निर्णय/आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं.82/केरल-लो.स./3एवं4/2019]

आदेश से,

दारसुओ थांग, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 10th August, 2020

O. N. 20 (E).—In pursuance of section 106 (a) of the Representation of the People Act,1951(43 of 1951), the Election Commission of India hereby publishes the Judgment of the High Court of Kerala dated 31st October, 2019 in the Election Petition No. 3 & 4 of 2019.

JUDGMENT

The captioned Election Petitions are filed by one and the same petitioner, challenging the

election held in April, 2019 to the Parliamentary Constituencies of '04' Wayanad and '12' Ernakulam, on the ground that her nominations were rejected by the Returning Officer of the respective Constituencies, having been suffered with conviction in C.C.No.1300/2013 on the files of the Judicial First Class Magistrate Court-I, Pathanamthitta imposing three years imprisonment and a fine of Rs.45 lakhs, and C.C.No.102/2014 of Judicial First Class Magistrate Court-I, Perumbavoor, imposed with imprisonment for a period of three years and a fine of Rs.10,000/-, as per the disqualification prescribed under Sec.8(3) of the Representation of People Act, 1951 (for brevity, 'the Act, 1951').

2 On filing the Election Petitions, defects were noted by the Registry and except one defect, all are typical in nature. The additional defect is in Election Petition No.4 of 2019, noting that the prayer made by the petitioner is incomplete. The Election Petitions were posted before the Court without numbering them in view of the defects noted, and the Registry was directed to number the Election Petitions as per the order dated 29.07.2019, subject to the condition that petitioner shall address on the issue with respect to the curability of the defects. Thereafter, notices were issued to the respondents, viz., the Chief Election Commissioner of India, Chief Electoral Officer, Kerala, Returning Officer, Wayanad Constituency, Returning Officer, Ernakulam Constituency, Returning Officer, Amethi Constituency in Uttar Pradesh and the returned candidates. The Returning Officer, Amethi Constituency is included in the party array, assigning the reason that the nomination submitted by the petitioner in the Amethi Constituency was accepted in spite of the conviction of the petitioner in the afore-quoted cases.

3 Learned Standing Counsel for the Election Commission has advanced a case that the Commission or the other officials are not necessary parties in view of the peremptory stipulations contained under Sec.82 of Act, 1951, and a separate petition is filed to remove the officers from the party array.

4 The respective counsel were heard with respect to the curability of the defects noted by the Registry, at length. When the hearing with respect to the curability of the defects were complete, learned Senior Counsel appearing for the returned candidates submitted that, the maintainability of the Election Petitions may also be heard by raising a preliminary issue on account of the fact that the conviction suffered by the petitioner was never suspended by the appellate courts. Accordingly, separate preliminary issues were framed on 01.10.2019 as to "whether the Election Petition is maintainable, since the conviction suffered by the petitioner is not suspended in the appeal proceedings".

5 So also, learned counsel appearing on either side agreed that, since the issues to be decided by this Court are of a typical nature, they may be heard together. I also find that no manner of prejudice will be caused to the parties, if the Election Petitions are heard together, since the issues are of typical nature, and the valuable time of the Court also can be saved to a large extent. Therefore, I heard them together and propose to deliver a common judgment.

6 I have heard Sri. K.T. Thomas and Smt. N.N. Girija, learned counsel appearing for the petitioner, Sri. Murali Purushothaman, learned Standing Counsel appearing for respondents 1 to 4 and Sri. S. Sreekumar, learned Senior Counsel appearing for the respective returned candidates, assisted by Advocate Ajay Ben Jose, and perused the pleadings and the documents on record.

7 The defects noted by the Registry, which are common in nature, are as follows:

"1.(a) Chalan No. is left blank in item No.4.

(b) Date of chalan No. differs in index - item No.4 Annexure-P.

(c) W.P.(C) No. mentioned in the description of Annexure-P5 is incorrect.

(d) W.P.(C) No. mentioned in the description of Annexure-P6 differs

(e) W.A.No. mentioned in Annexure-P7 differs and description of Annexure-P7 is incorrect.

2. Copy not served on Standing Counsel/Government Pleader.

3. Petitioner has not signed in the declaration portion of verification in page 18 of E.P.

4. The name of the Advocate who authenticated the affidavit not shown.

5. In verification portion, in respect of Annexures, affidavits and petitions, it is stated that index has been filed instead of Annexures, affidavits and petitions.

6. *Pages of Annexures not properly marked.*

7. *Annexures are not verified by the petitioner as mandated. Instead of verification, annexures are seen certified as true copies by the petitioner and the counsel. As per Sec.83 of Representation of People Act, any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

8. *Additional exhibits mentioned in Annexure-P5 not seen attached with the Annexures.*

9. *Top most portion of Annexure-P11 not legible.*

10. *Pin code of R4 not shown.*

11. *Name of the Act is incorrectly shown on the docket and in memorandum.*

12. *Description of Annexure-P2 shown in memorandum of E.P. is incorrect.*

13. *Date of Writ Appeal order mentioned in the memorandum is incorrect.*

14. *Synopsis not in accordance with Rule 35(5) of High Court Rules.*

15. *In Annexure-P2, the appeal number is not shown and Annexures thereto not seen attached.*

16. *The prayer in E.P. is to declare the election of 5th respondent from Wayanad Lok Sabha Constituency as void and inoperative. Hence, it is to be considered as to whether the 4th respondent is a necessary party in this E.P. ”*

The additional defect noted by the Registry in Election Petition No.4 of 2019 is as follows:

“Prayer (a) is incomplete”.

8. Learned counsel appearing for the petitioner addressed arguments on the defects noted by the Registry, basically contending that they are all curable defects and not at all affecting the foundation of the Election Petitions, and therefore, the petitioner may be permitted to cure the defects and then hear the Election Petitions in accordance with law.

9. On the other hand, learned Senior Counsel appearing for the returned candidates submitted that, many of the defects noted by the Registry are not curable. It is also pointed out that, there is no proper verification of the Election Petition as is contemplated under the provisions of the Act, 1951. It is also pointed out that, there is no proper verification of the affidavit filed by the petitioner in contemplation of law. So also, the original orders passed by the Returning Officers declining to accept nominations of petitioner are not produced, and only the copy of the orders are produced, which are not even verified in accordance with the provisions of law. So also, many of the documents accompanying the Election Petitions are not verified at all, which are going to the root of the matter, and therefore, not curable.

10. Learned counsel for the petitioner, in that regard, has invited my attention to the judgments of the apex court in '*V.S. Achuthanandan v. P.J. Francis and Another*' [(1999) 3 SCC 737], '*T.M. Jacob v. C. Poulose and Others*' [(1999) 4 SCC 274], '*G. Mallikarjunappa and Another v. Shamanur Shivashankarappa and Others*' [(2001) 4 SCC 428], '*T.Phungzathang v. Hangkhanlian and Others*' [(2001) 8 SCC 358], '*G.M. Siddeshwar v. Prasanna Kumar*' [(2013) 4 SCC 776], and '*Umesh Challiyil v. K.P. Rajendran*' [(2008) 11 SCC 740] and the judgment of the Bombay High Court in '*Ravindra Ramji Mundhe v. Avadhoot Anil Tatkare and Others*' [2018 (1) Mh.L.J. 450].

11. On the other hand, learned Senior Counsel appearing for the returned candidates has invited my attention to the judgments of this Court in '*Meethian v. Poulose*' [1997 KHC 118 : 1997 (1) KLT 623] and '*Mary Thomas v. Anil Akkara (M.L.A Wadakkanchery) and Others*' [2017 (2) KHC 518] and also relied upon the judgment of the apex court in '*Umesh Challiyil*' (*supra*) relied upon by learned counsel for the petitioner.

12. So far as the judgment in the case of '*V.S. Achuthanandan*' (*supra*) is concerned, the subject matter therein was relating to defect in material particulars concerning the corrupt practices and whether the petition could be dismissed *in limine* on account of such defect, wherein it is held that, an election petition is not liable to be dismissed *in limine* merely because full particulars of corrupt

practice alleged were not set out. It was further held that, the material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action, and therefore, it is a matter to be considered during the trial. In my considered opinion, the said judgment has no relevance to the facts and circumstances of this case.

13. The question considered in '*T.M. Jacob*' (*supra*) was whether non-compliance with Sec.81(3) of RP Act is a curable defect or not. Section 81(3) of Act, 1951 stipulates that, every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition, and held that, the same is not a defect taken care of under Sec. 86(1) of Act, 1951, which stipulates that the High Court shall dismiss an election petition which do not comply with the provisions of Section 81 or Section 82 or Section 117. Going by the defects noted by the Registry, it is clear that there are other defects which are taken care of under Sections 81 and 82 of Act, 1951. Therefore, the facts and circumstances are entirely different in these cases. Moreover, wild and baseless allegations are made against a former Chief Minister of the State of Kerala, attributing immorality, which is not a subject matter for deciding the rejection of nominations of the petitioner.

14. So much so, there is no semblance of verification in accordance with the provisions of Sec.83(1)(c) read along with Order VI, Rule 15 CPC, dealing with verification of pleadings in the original Election Petitions. It is quite interesting to note that the election petitions are verified by the petitioner in the following manner:

"I, Saritha S. Nair, aged 40 years, D/o. Indira Nair, Indeevaram, Vilavoorkal, Malayinkeezhu, Thiruvananthapuram 695 571, the Petitioner herein, do hereby declare that what is stated in paragraph 1 to 11 are true to the best of my knowledge and paragraphs 12 to 17 are stated on information and belief derived by me and I believe the same to be true and the legal grounds thereof in the Election Petition are true to the best of my knowledge, information and belief and no part thereof is false and nothing which is relevant has been concealed."

Verified today, this 22nd day of June, 2019 at Ernakulam".

15. However, to the verification done by the petitioner, there is no signature of the petitioner, but the signature is that of Advocate K.T. Thomas in Election Petition No.3/19 and in Election Petition No.4/19, there is only signature of the advocate without the name and it appears to be that of Advocate N.N. Girija, since it resembles the signature affixed by Advocate N.N. Girija just below the verification hereafter discussed, who is appearing for the petitioner. Yet another verification is done by the petitioner just below the verification specified above, wherein, apart from the signature of petitioner in Election Petition No.3/19, signatures are affixed by the petitioner's Advocate, K.T.Thomas in the place of Advocate N.N. Girija, but has handwritten his name, and Advocate N.N. Girija, which reads thus:

"I, Saritha S. Nair, D/o. Indira Nair, Indeevaram, Vilavoorkal, Malayinkeezhu, Thiruvananthapuram-695 571, the Petitioner herein, do hereby verify and declare that this is the index filed along with the Election Petition and believed to be the same".

And in Election Petition No.4/19, under the similar verification, petitioner and Advocate N.N. Girija have affixed their signatures. It is also interesting to note that, in the affidavit accompanying the Election Petitions, the verification done just above the date is as follows: "What is stated above are true" and apart from the petitioner signing as deponent, Advocates Smt.

N.N. Girija and Sri. K.T. Thomas have signed in Election Petition No.3/19 and Advocate N.N. Girija has signed in Election Petition No.4/19. Again in the oath attestation portion, apart from the advocate, petitioner has also signed, but the name of the advocate is not mentioned.

16. That apart, yet another verification is done by the petitioner below the same, stating as follows:

"I, Saritha S. Nair, aged 40 years, D/o. Indira Nair, Indeevaram, Vilavoorkal, Malayinkeezhu, Thiruvananthapuram 695 571, the Petitioner herein, do hereby verify and declare that this is the index filed along with the Election Petition and believed to be the same."

Verified today this 22nd day of June, 2019 at Ernakulam”

and signed by Advocate K.T.Thomas, Advocate N.N. Girija, and the petitioner in Election Petition No.3/19 and Advocate N.N. Girija along with the petitioner in Election Petition No.4/19.

17. Therefore, on a reading of the verification, as is specified above, it is clear that petitioner is not owning up the pleadings and the allegations made in the Election Petitions. Same is the case with the affidavit filed by the petitioner. What is verified to be true in the Election Petition is the index of the Election Petitions. In my considered opinion, the verification in that manner is totally against the requirements under law, and the same appears to be made by the petitioner purposefully with the intention of disowning the immoral allegations made against a former Chief Minister of Kerala. It is also clear that petitioner has not even produced the original of the orders passed by the Returning Officer and the first page of the orders are stated to be the true copy of the document marked as Annexure-P1, and signatures are affixed in all the pages by the two Advocates as well as the petitioner. However, the same is not verified in the last page that is required to be made as per the provisions of Sec.83(1)(c) of Act, 1951.

18. So also, as per Sec.83(2) of Act, 1951, any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. However, no such verification is made in the schedule and annexures at all. Many of the exhibits produced are not verified at all. Therefore, the proposition of law laid down in '*T.M. Jacob*' (*supra*) has no relevance to the facts and circumstances of this case. So is the case with the judgment of the apex court in '*G. Mallikarjunappa and Another*' (*supra*).

19. However, in '*T.Phungzathang*' (*supra*), the apex court found that the attestation made in the copies is substantially satisfying the compliance with the requirements of law. Therein, the facts and circumstances are entirely different, which is quite clear from the finding that, “when the defect in the original affidavit is removed at a later stage, copy of such affidavit would also be supplied to the respondent only at a later stage”. It was also found that there was substantial compliance with the verification in the affidavit accompanying the election petition and it was also found that the defects were curable defects. The defects pointed out above with respect to verification in the Election Petitions and the affidavits are entirely different from the facts and circumstances in the said case. At this juncture, it is relevant to note that those defects in the original Election Petitions are reflected in the copies of the election petitions produced and supplied to the respondents.

20. So far as the judgment in '*G.M. Siddeshwar*' (*supra*) is concerned, it was dealing with verification of election petition as required under Sec.83(1)(c) of Act, 1951 and affidavit supporting allegation of corrupt practice as required as per Sec.83(1) proviso of Act, 1951, wherein it was held that, all that is required is verification of pleadings in election petition in the manner prescribed under Order 6, Rules 15(1), (2) and (3) CPC, since that is all that RP Act requires for election petitions not containing any allegation of corrupt practice, and no affidavit of any sort is required, since there is no such requirement in RP Act in an election petition filed without allegations of corrupt practice. Then it was found that the issue is not going to the root of the matter, and therefore, the defects noted are curable.

21. The question that was considered by the apex court in '*Umesh Challiyil*' (*supra*) is with respect to the defect noted in the affidavit filed along with the election petition in support of allegations of corrupt practice as required under the proviso to Sec.83(1) of RP Act, read with Rule 94-A of Conduct of Election Rules and Order 6, Rule 15 CPC *vis-a-vis* the verification of pleadings and affirmation by Magistrate/Notary/Commissioner of Oaths as prescribed in Form 25 under Rule 94-A. Therein, it was found that the defect noted would not go to the root of the matter, and therefore, cosmetic in nature. Same is the judgment in Bombay High Court in '*Ravindra Ramji Mundhe*' (*supra*), wherein the question considered was the defect in verification of exhibits and it was found that the petition cannot be dismissed *in limine*, as the defect is a curable one.

22. On the other hand, the judgment in '*Meethian*' (*supra*), rendered by this Court, relied on by learned Senior Counsel for the returned candidates has laid down the law that, if prayer for declaring the election of the returned candidate void, is not there in the Election Petition, it is fatal to the maintainability of the Election Petition. So also, it considered the question as to whether the verification done is proper or not, and has held that the document purporting to be a true copy of the election petition furnished by the petitioner to the returned candidate gave the impression that the petitioner's affidavit supporting his allegations of corrupt practice had not been sworn or affirmed and was therefore, no affidavit at all, which is fatal to the election petition.

23. So also, learned Senior Counsel submitted that, the judgment in '*Umesh Challiyil*' (*supra*) relied on by the petitioner has no bearing to the facts and circumstances of the case on hand, since it was held in that case that verification made was substantially in accordance with requirements of law, and therefore, is a curable defect. But at the same time, it was held that the Election Petition can be dismissed on ground of it being not properly constituted as required under the provisions of the Code of Civil Procedure. However, in the case on hand, there is no verification at all made by the petitioner in the election petitions and furthermore, there is no prayer at all to set aside the election void in Election Petition No.4 of 2019. So also, the judgment in '*Mary Thomas*' (*supra*) was pressed into service to contend that, when Schedule 1, which forms the integral part of election petition suffers from total lack of verification, same clearly comes within the mischief of Sec.81(1) and Sec.83(2) of Act, 1951. Wherein, it was held that, when in the verification portion in the copies of Schedule-I available before this Court clearly show that they are true copies of Schedule-I, and what has to be understood is that the original of Schedule-I has not been filed before this Court. Further, it was held therein that, the verification done do not conform to the standard prescribed under Order VI, Rule 15(2) of the CPC, and even on a bird's eye view, it is evident that the said verifications do not conform to the standards prescribed under Order VI, Rule 15(2) CPC.

24. Now taking into account the arguments addressed by learned counsel for the petitioner as well as the learned Senior Counsel for the returned candidates, the question to be considered is, whether the defects noted by the Registry are curable or not? In my considered opinion, among the defects noted by the Registry, the following three defects are not curable:

“1. Petitioner has not signed in the declaration portion of verification of the election petitions.

2. In verification portion, in respect of Annexures, affidavits and petitions, it is stated that index has been verified instead of Annexures, affidavits and petitions.

3. Annexures are not verified by the petitioner as mandated, and instead of verification, annexures are seen certified as true copies by the petitioner and the counsel.”

25. As per Sec.83(2) of the Representation of People Act, 1951, any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. The afore-stated defects are common in both the election petitions and apart from the same, in Election Petition No.4 of 2019, there is no relief at all made to declare the election void, instead, petitioner has sought for the following reliefs:

“a) To declare that the election of the 5th Respondent from Ernakulam Lok Sabha Constituency.

b) After passing order in prayer (a) order for fresh election to Ernakulam Lok Sabha Constituency and accept the nomination of the Petitioner.

c) To award the cost of these proceedings to the Petitioner;

d) To issue such other and further orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

26. So far as the verification of the election petition is concerned, it is dealt with under Sec.83(1)

(c) of Act, 1951, which stipulates that the election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. As is discussed above, there is no verification made by the petitioner in the Election Petitions by affixing the signature of the petitioner in the verification portion and whatever verification done by the petitioner is only verifying that the “index of the election petitions are true and correct”. The copies of the election petition served on the returned candidate are also having the very same defects. Therefore, the mandatory stipulation in Sec.81(3) of Act 1951, that every election petition shall be accompanied by, as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition, is also not complied with by the petitioner.

27. The defects that are contained in the election petitions submitted before the Court are also remaining in the copies served on the returned candidates and other respondents, which thus means, there is no signature of the petitioner verifying the copy to be true copy of the Election Petition, in a properly constituted Election Petition. The rigour so far as the verification part is concerned, is more in the election petitions on hand, since baseless, unwarranted and wild allegations

are made in the election petitions against a former Chief Minister of Kerala, which are not matters required for deciding the issue raised by the petitioner in the election petitions on the ground of non-acceptance of the nominations submitted by the petitioner.

28. Analysing the allegations made by the petitioner in the election petitions, one will have to view the same as deliberate, with the *malafide* intention of disowning the allegations made and as a prelude to make defence in any future course of action against the petitioner. It is also equally important to note that the name of the Advocate is not reflected in the attestation portion of the affidavit filed, and the petitioner has carefully avoided affixing signature under the verification made by her, and instead, the Advocate has attested the said portion. Moreover, the reliefs sought for against the returned candidate in Election Petition No.4 of 2019 is as follows:

“To declare that the election of the 5th Respondent from Ernakulam Lok Sabha Constituency”

which can never be treated as a prayer to declare the election of the returned candidate void, and all the other reliefs claimed in the said petition are consequential to the 1st prayer, and therefore, there is no properly constituted prayer in the relief portion of Election Petition No.4 of 2019.

29. To put it otherwise, petitioner has not filed the election petition in accordance with the mandatory requirements of law and is filed in a casual manner without even attesting many of the Annexures, and without properly marking the same. True, they may be curable defects, but the casual manner in which the petitions are filed with the wild allegations made against the former Chief Minister of Kerala, can only be viewed as, with the *malafide* intention on the part of the petitioner to malign the reputation of third persons through the election petitions filed. Taking into account all these aspects, I am of the considered opinion that, the defects noted by the Registry, as specifically pointed out above, are not curable in nature.

30. The second question that emerges for consideration is on the basis of the preliminary issue raised as to the maintainability of the election petitions, since the conviction suffered by the petitioner in two cases are not suspended and only the sentences are suspended by respective appellate/Revisional courts. In that view of the matter, Sec.8(3) of Act, 1951 dealing with disqualification on conviction for certain offences is relevant to the context, which read thus:

“(3) A person convicted of any offence and sentenced to imprisonment for not less than two years (other than any offence referred to in sub- section (1) or sub- section (2)) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.”

31. As per the Annexures-P4 and P3 respectively produced by the petitioner, it is clear that the sentence alone are suspended by the appellate/revisional courts. However, learned counsel for the petitioner has a case that her nomination was accepted in the Amethi constituency in the State of Uttar Pradesh and she contested the election and has secured nearly 600 votes, and therefore, the rejection of the nominations by the Returning Officers of Wayanad Parliamentary Constituency and Ernakulam Parliamentary Constituency are not correct. In my considered opinion, the acceptance of a nomination by the Returning Officer at Amethi is not a binding factor on this Court to consider the election petitions filed by the petitioner before this Court. Moreover, a mistake committed by the Returning Officer cannot be taken into account for the purpose of analysing the situations projected by the petitioner in the election petitions in question, nor it is a binding precedent on this Court.

32. The issue was considered by the apex court in '***K. Prabhakaran v. P. Jayarajan***' and held that, under sub-section (3) of Sec.8 of Act, 1951, the period of disqualification commences from the date of such conviction whether or not the person has been taken into custody to undergo the sentence of imprisonment. It was further held that, one cannot escape the effect of disqualification merely because he has not been taken into custody because he was on bail or absconding. Accordingly, it was found that it is clear from a bare reading of sub-section (3) of Sec.8 of Act, 1951, that the actual period of imprisonment is relevant. Moreover, learned Senior Counsel has invited my attention to the judgment of the apex court in '***Election Commission of India v. Saka Venkata Subba Rao and Others***' [AIR 1953 SC 210]

33. So also, the judgment of the apex court in '***Ravikant S. Patil v. Sarvabhouma S. Bagali***' [(2007) 1 SCC 673] is relevant to the context, wherein the stay of conviction was secured and thereupon, it was held that the stay of conviction was prior to the submission of nomination, and therefore, the rejection of the nomination was bad. The said question was also considered by the apex court in '***Lalsai Khunte v. Nirmal Sinha and Others***' [(2007) 9 SCC 330] and restated the legal position with respect to the stay of conviction as a vital requirement on the date of submission of the

nomination. So also, the judgment in '*Lily Thomas v. Union of India and Others*' [(2013) 7 SCC 653] is also pressed into service dealing with the disqualification on the basis of conviction suffered.

34. Taking into account the principles of law laid down in the aforesaid cases, I am of the considered opinion that, it could be clearly made out that the petitioner was disqualified in contesting the election from Wayanad Parliamentary constituency as well as the Ernakulam Parliamentary constituency, in accordance with Article 102 of the Constitution of India, dealing with disqualifications for membership. Clause 1(e) of Article 102 of the Constitution of India stipulates that, if he is so disqualified by or under any law made by Parliament, a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament. Therefore, Sec.8(3) of Act, 1951 makes it clear that petitioner was disqualified to submit nomination to the Parliamentary constituencies on account of the conviction suffered by her, as specified above.

35. Petitioner has produced the proceedings of the Returning Officer rejecting the nomination as Annexure- P1 in both the election petitions, and on a reading of the same, it is clear that the Returning Officer has taken into account the entire *pros and cons* of the matter and has found that the conviction has not been stayed/suspended, and therefore, petitioner is disqualified to contest the election under Sec.8(3) of Act, 1951. This is done by the returning officer, in accordance with the powers conferred under Sec.36 of Act, 1951 dealing with scrutiny of nominations, and sub-section (2) and clause (a) therein are relevant to the context, which read thus:

“(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:--

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:

Articles 84, 102, 173 and 191.

Part II of this Act and sections 4 and

14 of the Government of Union Territories Act, 1963 (20 of 1963); or”

36. Taking into account all the above specified aspects and the annexures produced by the petitioner, it is convincing and clear that the rejection of nominations by the respective Returning Officers are in accordance with law. It is also explicit and clear that, without adduction of any oral evidence, the said issue is discernible. Which thus also means, there is no complex situation remaining to adjudicate the issue as a preliminary one. Therefore, the election petitions have no legal and factual sustenance, since it is clearly admitted by the petitioner herself that the sentence alone is suspended by the respective appellate/revisional courts. It is also clear from the reliefs sought for by the petitioner in the appeal/revision that the petitioner has sought only for suspension of the sentence and not even a prayer is made to suspend the conviction. Therefore, at the time of submitting the nominations, petitioner was having the disqualification in terms of Sec.8(3) of Act, 1951. Accordingly, the election petitions are liable to be dismissed also on the basis of the said preliminary issue raised.

37. It is also equally important and significant to note, even going by the admission made by the petitioner, petitioner has submitted nominations to three Constituencies, i.e., Wayanad and Ernakulam in the State of Kerala and Amethi in the State of Uttar Pradesh, against the prohibition contained under Sec.33(7)(a) of Act, 1951, which read thus:

“(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,--

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies”.

Therefore, going by Article 102(1)(e) of the Constitution of India read with Section 33(7) of Act, 1951, petitioner suffers from the said disqualification also.

38. Learned Standing Counsel for the Election Commission has submitted that, in view of the imperatives contained in Sec.82 of Act, 1951, the Election Commission of India and the Returning Officers are not necessary parties to the election petition, and therefore, they are entitled to

be removed from the party array. Section 82 of Act, 1951 read thus:

“82. Parties to the petition

A petitioner shall join as respondent to his petition--

(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

39. Therefore, it is clear that the impleadment of the Election Commission of India, Chief Electoral Officer and Returning Officers of the respective Constituencies as well as the Amethi Constituency are not in accordance with law. The said issue was considered by the apex court in '*Jyoti Basu and Others*

v. Debi Ghosal and Others' [(1982) 1 SCC 691], '*B. Sundara Rami Reddy v. Election Commission of India and Others*' [(1991) Supp (2) SCC 624] and '*Michael B. Fernandes v. C.K. Jaffar Sharief and Others*' [(2002)

(3) SCC 521] and held that the officials are not necessary parties to an election petition and a person who is not a candidate may not be joined as a respondent.

40. In fact, the Chief Election Commission of India and other Electoral Officers of Kerala has filed interlocutory applications in the Elections Petitions seeking to strike out them from the party array. Taking into account the aforesaid aspects, I am of the considered opinion that, the said officials were unnecessary parties to the election petitions. It is declared so and they are removed from the partyarray.

41. To sum up, the election petitions are dismissed on the ground of incurable defects pointed out above in terms of Sec.86(1) of Act, 1951, and that the petitioner was disqualified from contesting the election in view of the inhibitions contained under Sec.8(3) of Act, 1951, read with Article 102(1)(e) of the Constitution of India.

Registry shall take steps to communicate the respective authorities in terms of Sec.103 of Act, 1951.

Sd/-
SHAJI P.CHALY

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS/ANNEXURES:

ANNEXURE P	CHALLAN NO. DATED 21.6.2019 REMITTING AS SECURITY AMOUNT FOR FILING ELECTION PETITION IN THE PRESENT MATTER.
ANNEXURE P1	THE TRUE COPY OF ORDER OF REJECTION OF NOMINATION DATED 6.4.2019 BY RETURNING OFFICER, WAYANAD, RESPONDENT NO.3.
ANNEXURE P2	TRUE COPY OF THE APPEAL PREFERRED BEFORE THE 2ND RESPONDENT DATED 6.4.2019.
ANNEXURE P3	THE TRUE COPY OF THE ORDER OF SUSPENSION OF SENTENCE PASSED BY THE SESSIONS COURT ERNAKULAM IN CRL.M.P.NO.138/2017 IN CRL. APPEAL NO.25/2017 DATED 17.1.2017.
ANNEXURE P4	THE TRUE COPY OF ORDER OF SUSPENSION OF

ANNEXURE P5

**SENTENCE IN CRL.MA NO.30/2018 IN CRL.RP
NO.09/2018 OF HIGH COURT OF KERALA, 4.1.2018.**

ANNEXURE P6

**THE COPY OF THE WRIT PETITION NO.1281/2019
FILED BY THE PETITIONER BEFORE HIGH COURT OF
KERALA.**

ANNEXURE P7

**TYPED COPY OF THE ORDER IN WPC NO.11282/2019
DATED 9.4.2019 BY THE HIGH COURT OF KERALA.
THE COPY OF THE WRIT APPEAL 1153/2019 AND
WRIT APPEAL ORDER DATED 11.4.2019 BY DIVISION
BENCH OF H.C KERALA DATED**

ANNEXURE P8

**CERTIFIED COPY OF THE ORDER IN WPC
NO.1153/2019 DATED 12.4.2019 BY THE H.C. KERALA.**

ANNEXURE P9

**TYPED COPY OF THE RECEIPT OF NOMINATION
PAPER ALONG WITH COPY OF THE RECEIPT DATED
18.4.2019 ISSUED BY RETURNING OFFICER
37-AMETHI LOK SABHA CONSTITUENCY.**

ANNEXURE P10

**COPY OF THE LIST OF APPROVED CONTESTING
CANDIDATES IN THE ELECTION TO THE HOUSE OF THE
PEOPLE FOR THE 37-AMETHI CONSTITUENCY,
PUBLISHED IN THE GAZETTE OF INDIA : EXTRA
ORDINARY.**

ANNEXURE P11

**COPY OF THE LIST OF CANDIDATES AND VOTES
RECEIVED AT 37-AMETHI CONSTITUENCY 2019 LOK
SABHA ELECTION.**

RESPONDENTS' EXHIBITS/ANNEXURES:**NIL**

[No. 82/KL-HP/3&4/2019]

By Order,

DARSUO THANG, Secy.